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Notification

No. LA/DP No. 1 of 2008/2012/2910

The following order dated 3rd February, 2012 regarding the Order passed by Shri Pratapsingh Rane, Speaker, Goa Legislative Assembly in respect of the Disqualification Petition No. 1 of 2008 filed by Shri Francisco Xavier Pacheco, Ex-MLA against Sarvashri Churchill Alemao and Aleixo Reginaldo Lourenco, MLAs is hereby published for general information.

N. B. Subhedar, Secretary, Legislature.

Porvorim, 3rd February, 2012.

BEFORE THE HONOURABLE SPEAKER OF
GOA LEGISLATIVE ASSEMBLY,
PORVORIM, GOA

IN THE MATTER OF PETITION FOR
DISQUALIFICATION NO. 1/2008

Shri Francisco Xavier Pacheco, ... Petitioner
MLA

[Resigned as MLA
w.e.f. 30-12-2011]

v/s

Shri Churchill Alemao, ... Respondent
MLA No. 1

Shri Aleixo Reginaldo Lourenco, ... Respondent
MLA No. 2

Petition No. 1 of 2008 is a petition for disqualification under the Tenth Schedule to the Constitution of India read with rules framed thereunder, made by Shri Francisco Xavier Pacheco, MLA (since resigned as MLA w.e.f. 30-12-2011) in relation to Sarvashri Churchill Alemao and Aleixo Reginaldo Lourenco, MLAs of the Fifth Goa Legislative Assembly. The petition was filed on 22-10-2008. The petition was forwarded to both the respondents and the Leader of the Legislature Party of the Indian National Congress, namely, Shri Digambar Kamat as required under the Members of Goa Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986. Replies to the petition were received from the respondents on 11-11-2008. Reply from the Leader of the Legislature Party of the Indian National Congress was received on 28-11-2008. The petitioner filed further information in response to the replies of the respondents on 16-4-2009. Oral hearings on the Petition were held on 5-1-2009, 16-4-2009, 7-7-2009, 17-8-2009, 30-6-2011 & 22-8-2011.

2. Shri Antonio Gaunkar, an office bearer of the Save Goa Front, a political party in Goa, sought to depose in the matter on issues raised in the petition by addressing a letter to me on 5-1-2009. He was allowed to do so.

3. The petitioner sought to withdraw the petition on 2-11-2009 which was not granted.

4. Due procedure as required under the Tenth Schedule to the Constitution of India and the Rules made thereunder, was followed prior to passing of this order.

5. I have carefully gone through the petitions, replies, oral arguments and the material placed before me by the petitioner, the respondents, the Leader of the Legislature Party of the Indian National Congress and Shri Antonio Gaunkar and applied my mind carefully to the questions raised in the light of judgements of the Honourable Courts and legal provisions thereof.

6. In sum, the petitions raise the following two questions:

- (i) whether the respondents incurred disqualification under paragraph 2 (1) (a) of the Tenth Schedule for having allegedly given up voluntarily the membership of the Save Goa Front by claiming merger of the said party with the Indian National Congress, (i) when, after their claim, the Save Goa Front continued to exist and (ii) when the merger of SGF with the INC was not alleged to have been carried out in accordance with the rules and regulations of the SGF political party?
- (ii) whether the respondents also incurred disqualification under paragraph 2 (1) (b) for having allegedly violated the directions given by the Save Goa Front to the respondents, after their claim of merger of the SGF with the Indian National Congress?

7. Before I proceed to deal with the above two questions raised, the following facts need to be recalled.

8. Respondent No. 1, Shri Churchill Alemao and Respondent No. 2, Shri Aleixo Reginaldo Lourenco were set up as candidates by the Save Goa Front and got elected to the Fifth Goa Legislative Assembly. On 23-1-2008, both filed Form III under the Members of Goa Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986, intimating the change in their party status from "SGF (Save Goa Front) to INC (Indian National Congress)". The Leader of the Legislature Party of the INC in Goa, Shri Digambar Kamat also filed Form I under the said Rules showing both the respondents in the fold of the INC's Legislature party in Goa.

9. The petition No. 1 of 2011 was filed subsequently.

10. The Legislature Party of the Save Goa Front had only two members, namely, both the respondents, in the Fifth Goa Legislative Assembly, at the time of claim of merger with the Indian National Congress.

11. In response to the Petitions for Disqualification, the respondents claimed that the Save Goa Front had merged with the Indian National Congress and the entire Legislature Party of the Save Goa Front, comprising two members, i.e., both the respondents, had merged with the Indian National Congress and thus they were entitled to the protection against disqualification as envisaged under paragraph 4 of the Tenth Schedule to the Constitution of India.

12. Paragraph 4(1) of the Tenth Schedule of the Constitution uses the word "claim" in relation to merger and paragraph 4(2) stipulates that "not less than two-thirds of the Legislature Party" should agree to the merger. Paragraph 4 does not speak of any other substantive thing in relation to merger.

13. This is not the first time such questions were raised in the context of administration of the Tenth Schedule to the Constitution of India. The pronouncements of the Courts and the provisions of law are clear. For sake of brevity, I am refraining from extensively quoting from them.

14. The merger envisaged in paragraph 4 of the Tenth Schedule does not lead to a situation of complete dismemberment of the rank and file of the political party after its merger with another political party. After merger of a political party with another political party, the former can still exist as a political party with some or a large number of rank and file of the party continuing to remain in the party and/or even may have the support of legislators whose number may not however exceed the one-third of the Legislature Party that existed before the merger. Therefore, after the claim of merger by not less than two-thirds of the legislature party, there still can be a faction of the original political party that may continue to exist, as paragraph 4(2) of the Tenth Schedule itself permits not more than one-third of the legislature party not accepting the merger, to live on. However, if there is a case, that the merger claimed has not been in accordance with any regulation of the political party, the remedy lies not in my forum and disqualification from membership under the Tenth Schedule is not the punishment for any such alleged aberration.

15. I, as Speaker, as a Tribunal under the Tenth Schedule and Rules made thereunder, put the claim of merger made by the respondents to the only acid test of whether the claimant MLAs, who seek protection against disqualification under paragraph 4, constitute not less than two-thirds

of the Legislature Party or not, when a claim of merger is made. My job under the Tenth Schedule is strictly confined to that acid test. Paragraph 4(2) of the Tenth Schedule is the sum and substance of the scheme of protection of claimants of merger. My function under the Tenth Schedule is to test the claims and counter claims on this touchstone. I am not supposed to wallow into other extra-jurisdictional areas which are in the nature of civil disputes. In the instant case, both the respondents, who claimed the protection of paragraph 4 of the Tenth Schedule, constituted 100% of the Legislature Party of the Political Party, namely, the Save Goa Front, and placed before me a "claim" that the Save Goa Front had merged with the Indian National Congress. Thus there was a "claim" and there was the requisite number. Indeed the number of claimants was more than the requirement stipulated under paragraph 4(2) of the Tenth Schedule, and therefore the claim of the respondents for protection under paragraph 4 of the Tenth Schedule is allowed with effect from 23-1-2008, their date of merging with INC as shown in their revised form III. Accordingly, the prayer for disqualification of the respondents on ground of "voluntarily giving up the membership of the Save Goa Front" under paragraph 2(1)(a) the Tenth Schedule is rejected.

16. Consequently, the contention of the Petitioner that they are subject to disqualification under paragraph 2 (1) (b) of the Tenth Schedule

on the ground that the direction issued by the Save Goa Front was violated, is also rejected. The respondents cannot be disqualified under paragraph 2(1)(b) of the Tenth Schedule also, since they had already become members of the Indian National Congress with effect from 23-1-2008, by merger, and thereafter they stood freed from the control of the Save Goa Front.

17. In view of the foregoing, I, Shri Pratapsingh Rane, Speaker, Goa Legislative Assembly, hereby reject Petition No. 1 of 2008 filed by Shri Francisco Xavier Pacheco, then MLA in relation to Sarvashri Churchill Alemao and Aleixo Reginaldo Lourenco, MLAs under the Tenth Schedule, and consequently, declare that Sarvashri Churchill Alemao and Aleixo Reginaldo Lourenco shall continue as Members of the Goa Legislative Assembly as their claim satisfied the scheme of paragraph 4 of the Tenth Schedule to the Constitution of India, more particularly, sub-paragraph (2) thereof.

Given under my hand and seal.

Porvorim, Goa.

Sd/-

(PRATAPSINGH RANE)

Speaker,
Goa Legislative Assembly.